

REMARKS/ARGUMENTS

In the restriction requirement dated March 10, 2009, the Examiner divided the claims into 15 groups (I-XV) as being patentably distinct inventions.

Accordingly, Applicants provisionally elect with traverse Group I (Claims 1-9, 15, 16, 20, 21 and 65 directed to a peptide that is a maturation product of the BPLP or a peptide derivative of thereof).

The claims of Groups I-XV are integrally linked as “compounds” and the use thereof.

Restriction is only proper if the claim of the restricted groups are either independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (M.P.E.P. §803).

The burden of proof is on the Examiner to provide reasons and/or examples to support any conclusions in regard to patentable distinction (M.P.E.P. §803).

There is a technical relationship that links Groups I-XV, and it is this technical relationship that defines the contribution which each of the Groups taken as a whole makes over the prior art.

The Examiner asserts that Groups I-XV do not relate to a single general inventive concept under PCT Rule 13.1 and 13.2 because they lack the same corresponding technical features. The Examiner has not considered that the claims in each group are considered to have related inventions under 37 C.F.R. §1.475(b) in which the inventions are considered to have unity of invention. Applicants submit that while Rule 13.1 and 13.2 are applicable 37 C.F.R. §1.475(b) provides in relevant part that “a national stage application containing claims to different categories of invention are considered to have unity of invention if the claims are drawn to ... (3) a product, process especially adapted for the manufacture of said product and a method of using said product...”.

Moreover, Applicants respectfully submit that a search of all the claims would not impose a serious burden on the Office. As the Office has not shown any evidence that a restriction should now be required when the International Preliminary Report did not, restriction is believed to be improper.

Further, the M.P.E.P. §803 states as follows:

If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on its merits, even though it includes claims to distinct or independent inventions.

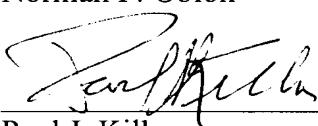
For the reasons recited above, Applicants request that the restriction requirement be withdrawn.

Divisional applications filed thereafter claiming the non-elected subject matter should not be subject to double-patenting grounds of rejection 37 C.F.R. §121 In re Joyce (Commr. Pat. 1957) 115 USPQ 412.

Applicants submit that the above-identified application is now in condition for examination on the merits, and an early notice of such action is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
Norman F. Oblon


Paul J. Killos
Registration No. 58,014

Customer Number

22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 08/07)